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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/160541

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 09, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability correctly modified the Petitioner's request for personal care worker (PCW) hours.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On June 24, 2014, Independence First completed a Personal Care Screening Tool (PCST) for the Petitioner. (Exhibit 3, pgs. 8-12)
3. On July 22, 2014, Independence First submitted, on behalf of the Petitioner, a request for personal care worker (PCW) service hours; 31.5 hours per week, plus 7 hours per week travel time for the PCW. This request for services was based upon the June 24, 2014 PCST. (Exhibit 3, pg. 5)
4. On August 26, 2014, DHS sent the Petitioner and his mother a notice advising them that the request for services was modified. (Exhibit 3, pgs. 21-24)
5. On August 26, 2014, DHS sent Independence First, notice of the same. (Exhibit 3, pgs. 25-26)
6. The Petitioner's mother filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 9, 2013. (Exhibit 1)
7. Petitioner is 12 years old and has a diagnosis of spastic quadriplegic cerebral palsy and bilateral leg pain. He is also symptomatic for Osgood-Schlatter syndrome. (Exhibit 2, attachment 7)

### DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

*Wis. Admin. Code § DHS107.02(3)(b)*

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;

10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Independence First, on behalf of Petitioner, requested 31.5 hours per week of Personal Care Worker (PCW) hours, with 7 hours per week travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved 18.25 hours per week, with 7 hours per week of travel time for the PCW.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Independence First, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table, which is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. This table was also attached to the OIG letter, Exhibit 2, attachment 8.

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs) are examined.

The letter from the Office of the Inspector General, indicated that DHS allowed the following times for activities of daily living and mots:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day x 7 days	140 minutes per week
3. Wrist Splint and Foot Brace Placement: 10 minutes per day x 7 days	70 minutes per week
4. Grooming: 15 minutes per day, 2x per day x 7 days	210 minutes per week
5. Eating:	zero
6. Mobility:	zero
7. Toileting:	140 minutes per week
8. Incontinence Care:	105 minutes per week
9. Transfers:	zero
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Total:	875 minutes week

With regard to the time allowed for bathing, dressing, and applying Petitioner's splints and braces, Petitioner's mother did not contest DHS's allocation of the maximum time allowed on the Personal Care Time Allocation Table.

With regard to grooming, the PCST indicated that Petitioner needs assistance at level F, because he depends entirely upon another person for grooming. Petitioner's mother testified that it can take 30 minutes to complete each episode of grooming which includes brushing teeth, applying deodorant and combing hair. However, there is nothing in the medical documentation that would support or explain the need for 30 minutes per episode to complete grooming. As such, it is found that DHS correctly applied the maximum amount of time, 30 minutes per day, for grooming.

With regard to eating, Petitioner's mother testified that the Petitioner sometimes pockets food, but can otherwise feed himself without issue. This is consistent with the information in the PCST, which states the Petitioner can feed himself. Accordingly, it is found that DHS correctly denied time for this task.

With regard to mobility, Petitioner's mother testified that because of the Osgood-Schlatter syndrome, it is painful for Petitioner to walk and as such, he needs assistance getting around his home. DHS denied time for mobility, because the PCST is not consistent with a physical therapy (PT) evaluation performed by Children's Hospital of Wisconsin on June 26, 2014.

That physical therapy evaluation indicates that the Petitioner does not use an assistive device to walk which would seem to indicate that he can get around his home safely. The evaluation indicates that the Petitioner likes to run/play with his siblings and ride his bike, although his ability to participate in these activities has been limited by pain. (See Exhibit 2, attachment 7) That same exhibit lists under impairments, "pain limiting mobility". However, the PT evaluation also indicates that although the Petitioner is a risk for falling and has decreased stability and atypical gait patterns, he is still within functional limits.

The PCST, indicates that the Petitioner needs assistance with mobility at level D, as needed, because his left leg buckles and locks up, but the PCST makes no mention of pain issues or gait instability. Given that the Petitioner is able to run and ride a bike with his siblings, even though he has pain; given that the Petitioner is apparently within functional limits despite gait abnormalities, and given the inconsistencies

between the PT evaluation and the PCST, it is found that DHS correctly determined that the medical documentation is not sufficient to support PCW time for mobility.

It should be noted that if the Petitioner has acute episodes of pain which require him to have additional assistance from a PCW, Independence First can submit a new prior authorization request, with clear supporting medical documentation, to ask for additional PCW time to be used as needed (PRN).

With regard to time allowed for toileting and incontinence care, the Petitioner's mother testified that the time allowed by DHS was about right.

With regard to transfers, Petitioner's mother indicated that the Petitioner needs assistance getting up from a chair and with getting out of bed, because of pain. However, the PCST indicates that the Petitioner is able to transfer himself. Further, the aforementioned PT evaluation indicated that the Petitioner was able to transition from sit to stand independently and that he could lower himself to the floor. As such, it is found that DHS correctly denied time for transfers.

With regard to Medically Oriented Tasks, the PCST indicates that PCW time is not needed for this task.

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming Petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. The DHCAA allowed for this time which works out as follows:

The actual time needed to complete Petitioner's ADLs and MOTs was 875 minutes. (See above) One fourth of 875 minutes is 218.75, rounded up to 219 minutes. So, Petitioner may receive an additional 219 minutes per week for incidental tasks.

Totaling all of the time allowable for Petitioner we have:

875 minutes per week for ADLs  
219 minutes per week for incidental activities

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1094 minutes per week ÷ 60 minutes = 18.23 hours per week

1094 ÷ 15 minutes = 73 units per week

DHS approved 73 units /18.25 hours per week. As such, DHS correctly modified Petitioner's request for services.

**Petitioner should note that if his condition changes / worsens, Independence First can always request additional PCW time on his behalf.**

### **CONCLUSIONS OF LAW**

DHS correctly modified the Petitioner's request for PCW services.

**THEREFORE, it is ORDERED**

That the petition is dismissed.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

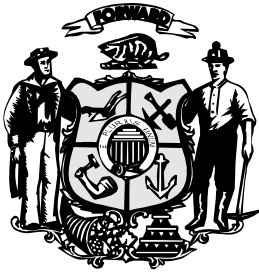
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of October, 2014

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 31, 2014.

Division of Health Care Access and Accountability